



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of V.A., Department of
Health

Discrimination Appeal

CSC Docket No. 2018-1381

ISSUED: JULY 23, 2018 (HS)

V.A., a Senior Laboratory Technician (Microbiology), with the Department of Health, appeals the determination of the Chief of Staff, which found sufficient evidence that the appellant had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the Office of Employee Relations (Employee Relations), interviewed P.B., a Research Scientist 1 Microbiology and the appellant’s supervisor, regarding the appellant’s September 30, 2016 workplace violence complaint against P.B.¹ During P.B.’s interview, which took place in November 2016, P.B. alleged that the appellant had made a derogatory race-based comment. Specifically, P.B. alleged that in November 2015, the appellant, an Asian, referred to the black race as lazy while talking about an African-American co-worker that she believed had a light workload. Employee Relations referred the allegation to the Office of Diversity and Equity Services (ODES). In response, the ODES conducted an investigation, during which it interviewed individuals and reviewed relevant documents. P.B. stated that in November 2015, V.M., a Supervising Laboratory Technician and an African-American, was given a light workload due to a medical issue. P.B. stated that she did not disclose to the appellant that V.M. had a medical issue, to maintain confidentiality. P.B. stated that the appellant continually questioned V.M.’s light workload for some time and P.B. stated, “This particular time, [the appellant] said that [V.M.] did not want to

¹ On October 11, 2016, the appellant filed a discrimination complaint against P.B. using the same document provided in the workplace violence complaint. The Office of Diversity and Equity Services investigated the discrimination complaint and did not substantiate it.

work and then [the appellant] said something to the effect of, 'black people are lazy.' ” P.B. further stated that the appellant would talk about how lazy V.M. was and how lazy other employees were, but on this occasion, the appellant included V.M.'s race. During the appellant's interview with the ODES, she acknowledged that P.B. had given light workloads to other employees, including V.M. The appellant denied ever saying to P.B. or to other employees that “black people are lazy” or “those people are lazy.” A witness, who was not present during the alleged incident with P.B., stated that the appellant would talk about employees that she believed received easy work assignments. The witness stated, “[The appellant] was talking about [V.M.] and she said either, 'these people are lazy' or 'black people are lazy,' I'm not sure which, either way she was talking about [V.M.].” While there were no independent witnesses for either of the two aforementioned incidents in which it was reported that the appellant referred to black employees as lazy, the ODES noted in summary that two separate employees, *i.e.*, P.B. and the additional witness, had each reported an incident in which the appellant referred to black employees by stereotyping the black race as being lazy in the work environment. The ODES thus substantiated the allegation against the appellant and referred the issue for administrative action. The appellant received counseling, which is not considered a disciplinary action. *See N.J.A.C. 4A:2-2.1 et seq.* and *N.J.A.C. 4A:2-3.1 et seq.*

On appeal to the Civil Service Commission (Commission), the appellant asserts that she has never made any derogatory race-based comments to anyone. She complains that it took P.B. one year to report her allegation despite her supervisory obligation under the State Policy to immediately refer such allegations to the appropriate individual within the agency.² The appellant suspects that P.B.'s allegation, given its timing, was made in retaliation for the appellant's complaints against P.B.

In response, the ODES reiterates that P.B. and an independent witness individually reported that the appellant referred to black people as being lazy. With respect to the appellant's retaliation claim, the ODES argues that although the appellant had previously filed a discrimination complaint against P.B., this does not provide her with “immunity” for her State Policy violations. The ODES maintains that the appellant was not subjected to adverse employment consequences as a result of her past complaint and the preponderance of evidence supports that the allegation P.B. reported did occur.

² Employee Relations also referred this issue to the ODES. The ODES advises that it investigated P.B.'s failure to timely report a State Policy violation, that “a determination letter was issued to [P.B.],” and that the results contained therein are “confidential.”

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)*3. The protected categories include race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *See N.J.A.C. 4A:7-3.1(a)*. It is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. *See N.J.A.C. 4A:7-3.1(b)*. Additionally, retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. *See N.J.A.C. 4A:7-3.1(h)*. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)*4.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the investigation established that the appellant violated the State Policy. The available documents were appropriately analyzed and witnesses were interviewed in investigating P.B.'s allegation prior to concluding that the appellant violated the State Policy on the basis of race. In this regard, P.B. reported that the appellant made a comment to the effect that "black people are lazy." A separate witness reported that the appellant stated either that "these people are lazy" or that "black people are lazy" when talking about V.M., an African-American. The appellant offers only a general denial in response. Thus, the Commission agrees with the ODES that there was a preponderance of evidence to support its finding that the appellant made derogatory race-based comments by stereotyping black individuals as being lazy. As such, the appellant's claim in this case that she has been retaliated against is unavailing, even though P.B.'s allegation surfaced after the appellant had filed a discrimination complaint against P.B. Accordingly, the investigation was thorough and impartial, and there is no basis to disturb the ODES' determination.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF JULY, 2018



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